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IN THE

Supreme Court of the United States

October Term, 1977

No. 77-1132

STATE OF NEW MEXICO
ex. rel. ENVIRONMENTAL IMPROVEMENT AGENCY,
Petitioner,

vs.

ALBUQUERQUE PUBLISHING COMPANY,
a New Mexico corporation,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF NEW MEXICO

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TABLE OF CONTENTS

	Page
OPINION BELOW	1
JURISDICTION	2
QUESTION PRESENTED	2
CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED	2
STATEMENT	4
REASONS FOR GRANTING THE WRIT	8
CONCLUSION	9

APPENDIX A	1a
APPENDIX B	4a

TABLE OF AUTHORITIES

Cases	Page
Barlow's, Inc. v. Usery, 424 F. Supp. 437 (D.Idaho 1977), *appeal docketed sub. nom. Marshall v. Barlow's, Inc.*, No. 76-1143, 45 U.S.L.W. 3686 (April 18, 1977). . . .	4, 8
Dunlop v. Hertzler Enterprises, 418 F. Supp. 627 (D.N.M. 1976), *appeal docketed* No. 76-2020 (10th Cir., November 5, 1976)	6, 8, 9
Usery v. Centrif-Air Machine Co., 425 F. Supp. 959 (N.D. Ga. 1977)	7, 8, 9
Constitutions	
United States Constitution Amendment IV	4, 5, 6
New Mexico Constitution Article II, Section 10	4, 5, 6
Statutes	
Judicial Code:	
28 U.S.C. § 1257	2, 7
28 U.S.C. § 2403	9
Occupational Safety and Health Act of 1970	
29 U.S.C. § 657	2, 3, 7, 8, 9
29 U.S.C. § 667	2, 7, 9
New Mexico Occupational Health and Safety Act § 59-14-9, NMSA 1953	2, 3, 5, 7, 8, 9

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No.

STATE OF NEW MEXICO
ex. rel. ENVIRONMENTAL IMPROVEMENT AGENCY,
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ALBUQUERQUE PUBLISHING COMPANY,
a New Mexico corporation,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF NEW MEXICO

The State of New Mexico, *ex rel.* Environmental Improvement Agency, prays that a writ of certiorari issue to review the judgment of the Supreme Court of the State of New Mexico.

OPINION BELOW

The opinion of the New Mexico Supreme Court (App. A, *infra*) is not yet officially reported. It is unofficially reported at 571 P.2d 117.

JURISDICTION

The judgment of the New Mexico Supreme Court, requiring that a search warrant must be obtained before an inspection can be made, under the state Occupational Health and Safety Act, of Appellee's premises, was entered on October 26, 1977. (The judgment was contained within the opinion, and no separate judgment was filed.) A motion for rehearing was denied on November 15, 1977 (App. B, *infra*). The jurisdiction of this Court rests on 28 U.S.C. § 1257(3).

QUESTION PRESENTED

Whether the inspection provision of the Occupational Safety and Health Act of 1970, 29 U.S.C. § 657(a), and the corresponding section of New Mexico's Occupational Health and Safety Act, § 59-14-9(A), NMSA 1953, violate the Fourth Amendment of the United States Constitution insofar as they authorize appropriate officials to inspect at reasonable times, without a warrant, commercial premises routinely occupied by an employer's work force.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

(1) Sections 18(b) and (c) (3) of the Occupational Safety and Health Act of 1970, 84 Stat. 1608, 29 U.S.C. § 667(b) and (c) (3), provides:

. . . .

(b) Any State which, at any time, desires to assume responsibility for development and enforcement therein of occupational safety and health standards relating to any occupational safety or health issue with respect to which a Federal standard has been promulgated under section 6 shall submit a State plan for the development of such standards and their enforcement.

(c) The Secretary shall approve the plan submitted by a State under subsection (b), or any modification thereof, if such plan in his judgment –

. . .

(3) provides for a right of entry and inspection of all workplaces subject to the Act which is at least as effective as that provided in section 8, and includes a prohibition on advance notice of inspections,

. . . .

(2) Section 8(a) of the Occupational Safety and Health Act of 1970, 84 Stat. 1598, 29 U.S.C. § 657(a) provides:

In order to carry out the purposes of this Act, the Secretary, upon presenting appropriate credentials to the owner, operator, or agent in charge, is authorized –

(1) to enter without delay and at reasonable times any factory, plant, establishment, construction site, or other area, workplace or environment where work is performed by an employee of an employer; and

(2) to inspect and investigate during regular working hours and at other reasonable times, and within reasonable limits and in a reasonable manner, any such place of employment and all pertinent conditions, structures, machines, apparatus, devices, equipment, and materials therein, and to question privately any such employer, owner, operator, agent, or employee.

(3) Section 59-14-9(A), NMSA 1953, provides:

In order to carry out the purposes of the Occupational Health and Safety Act, the agency's authorized representatives, upon presenting appropriate credentials to the owner, operator or agent in charge, are authorized:

(1) to enter and inspect any place of employment at reasonable times and without delay; and

(2) to question the employer and employees and to inspect and investigate during regular working hours and

at other reasonable times and within reasonable limits and in a reasonable manner, the place of employment and all pertinent conditions, structures, machines, apparatus, devices, equipment and materials therein.

(4) The Fourth Amendment to the United States Constitution provides:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

(5) Article II, Section 10 of the Constitution of the State of New Mexico provides:

> The people shall be secure in their persons, papers, homes and effects, from unreasonable searches and seizures, and no warrant to search any place, or seize any person or thing, shall issue without describing the place to be searched, or the persons or things to be seized, nor without a written showing of probable cause, supported by oath or affirmation.

STATEMENT

(1) No purpose would be served by a lengthy statement of the case. The issues are essentially identical with those now before this Court in *Marshall v. Barlow's, Inc.*, No. 76-1143, 45 U.S.L.W. 3686 (April 18, 1977), with the exception that we do not agree that the statutes in question should be interpreted to require that a warrant be obtained prior to inspection. We believe that such an interpretation is equivalent to a holding that the statutes are unconstitutional, inasmuch as a warrant could be obtained in the absence of the statutes: To say that a statutory provision is consistent with the Constitution only if one reads into the statute a requirement that the person attempting to invoke the statute do what he would have to do in the

absence of the statute is to say that the statute is not consistent with the Constitution, *i.e.*, that the statute is unconstitutional.

(2) On October 15, 1976, a compliance officer of the Occupational Health and Safety Division of the New Mexico Environmental Improvement Agency ("Agency") attempted an inspection, pursuant to the authority of § 59-14-9, NMSA 1953, of the Albuquerque Publishing Company's ("Company") premises at Seventh and Silver, SW, Albuquerque, New Mexico. The Company refused to allow the inspection of said premises.

The Agency subsequently filed suit in state district court for a preliminary and permanent injunction requiring the Company to allow an occupational health and safety inspection of its premises. The Company filed an answer which admitted that entry had been denied, but alleged that such entry without a warrant issued by a judicial officer was unconstitutional in violation of the Fourth Amendment of the United States Constitution and Article II, Section 10, of the New Mexico Constitution. The Company also counter-claimed, requesting that a preliminary and permanent injunction be entered against the Agency enjoining it or its agents from making such inspection without a search warrant.

Following oral argument before the district court on the Company's motion for judgment on the pleadings, and the request of both parties for a preliminary and permanent injunction, the court entered judgment for the Company, holding that a warrantless search of the non-public portion of the Company's premises, pursuant to § 59-14-9, NMSA 1953, is in violation of the Fourth Amendment of the United States Constitution and Article II, Section 10 of the New Mexico Constitution. The Agency appealed to the New Mexico Supreme Court.

On October 26, 1977, following briefs and oral argument, the New Mexico Supreme Court affirmed the judgment of the of the district court, and held

> . . . that a non-consensual, warrantless administrative inspection of business premises can be made only when:

> (1) the enterprise sought to be inspected is engaged in a business pervasively regulated by state or federal government; (2) the inspection will pose only a minimal threat to justifiable expectations of privacy; (3) the warrantless inspection is a crucial part of a regulatory scheme designed to further an urgent government interest; and (4) the inspection is carefully limited as to time, place and scope.

The Agency filed a motion for rehearing, which was denied on November 15, 1977. The mandate of the New Mexico Supreme Court was filed on November 28, 1977. The mandate was recalled and judgment stayed, pursuant to the Agency's motion, on December 9, 1977, to allow the Agency to file this petition.

(3) The opinion of the New Mexico Supreme Court did not specifically state whether its judgment was based upon state or federal grounds. The Company's challenge in district court was based both on the Fourth Amendment to the United States Constitution and on Article II, Section 10 of the New Mexico Constitution (the state equivalent to the Fourth Amendment), and the judgment of the district court purported to be based upon both grounds. Since the judgment of the supreme court affirmed the judgment of the district court, it would appear that it also was based, by implication, on both state and federal grounds. A close analysis of the record, however, will show that the only possible grounds for the judgment are the federal grounds.

The judgment of the district court cited no cases, but the District Judge did state his reasons in a letter to the attorneys. All cases cited in the letter on the issue here involved were federal cases based upon federal constitutional grounds. Similarly, cases cited by the supreme court in its opinion were federal cases based upon federal constitutional grounds. In fact, the supreme court specifically stated that it

> . . . chooses to follow the theories advanced in *Dunlop v. Hertzler Enterprises,* 418 F. Supp. 627 (D.N.M. 1976), *appeal docketed* No. 76-2020 (10th Cir., November 5, 1976) and *Usery v. Centrif-Air Machine Co.*, 424 F. Supp. 959, 961 (N.D. Ga. 1977).

It is therefore apparent that there are, in fact, no adequate state grounds to support the judgment of the New Mexico Supreme Court.

(4) The decision of a state court holding a state statute unconstitutional, even on federal grounds, is not, of course, reviewable on appeal to this Court. Superficially, this *appears* to be the case here, and for this reason certiorari is sought, rather than an appeal. But, although the Company explicitly challenged only the state statute [§ 59-14-9(A), NMSA 1953], the corresponding federal statute [29 U.S.C. § 657(a)] was implicitly challenged as well. This is true because: (1) the two statutes are virtually identical; and (2) the state statute was enacted specifically so that New Mexico could enforce its own laws and regulations in the occupational health and safety field, in accordance with § 18 of the federal Occupational Safety and Health Act of 1970, 29 U.S.C. § 667. One of the requirements which must be met in order for a state to have its plan approved by the Department of Labor, in accordance with § 18 of the federal Act, is that the state must provide ". . . for a right of entry and inspection of all workplaces subject to the Act *which is at least as effective as that provided in Section 8. . . .*" [29 U.S.C. § 667(c) (3) (emphasis added).] The right of entry and inspection provided by the state statute is exactly the same as that provided by the federal statute, neither more nor less effective. Given these considerations, it is obvious that if the state statute is unconstitutional, the federal statute must also be unconstitutional; and the New Mexico Supreme Court impliedly held 29 U.S.C. § 657(a) (the federal counterpart of § 59-14-9(A), NMSA 1953) unconstitutional. Therefore, although this petition asks for a writ of certiorari, Petitioner believes the facts show that it would have been entitled to an appeal under 28 U.S.C. § 1257(1).

REASONS FOR GRANTING THE WRIT

(1) The issues presented in this petition are of substantial importance, for essentially the same reasons advanced in the jurisdictional statement for *Marshall v. Barlow's, Inc., supra,* except as those reasons relate to the question as to whether the statutes should be interpreted to require that a warrant be obtained prior to inspection. No useful purpose would be served by repeating those reasons here. Instead, we adopt by reference Part 1 of that portion of the *Barlow's* Jurisdictional Statement relating to the substantiality of the questions. In so doing, we are fully aware that *Barlow's* is an appeal, whereas this is a petition for a writ of certiorari, which involves different considerations. Despite this technical difference, however, there is no essential difference in the issues involved, and this petition should be viewed with the same considerations as an appeal.

(2) Congress did *not* put a search warrant provision into 29 U.S.C. § 657(a), although, as the district court in *Barlow's* points out, it "was able, had it wished to do so." Neither did the New Mexico legislature put a search warrant provision into § 59-14-9, NMSA 1953, as, indeed, it could not have done and still met the requirements of 29 U.S.C. § 667(c) (3). The warrant requirement was enacted into law by the courts in *Hertzler, supra,* in *Centrif-Air, supra,* and in the instant case. By these acts of judicial legislation, these courts, including the New Mexico Supreme Court, have superficially avoided a holding of unconstitutionality.

In their opinions, these courts have held that the federal and state statutes allow inspectors to inspect either by consent of the employer or by obtaining a search warrant. But that is exactly what the inspectors could do without the statutes. They do not need a statute if they have consent to search; they do not need a statute to search under a search warrant. This judicial redrafting of the law has construed the statute out of existence.

Congress did not include the requirement of a search

warrant, and therefore the law, as written by Congress, must be unconstitutional under the holdings of the courts in *Hertzler, Centrif-Air,* and the instant case. To interpret the holdings of these courts, including the New Mexico Supreme Court, as *not* holding the statute unconstitutional would be to elevate form over substance.

(3) The validity of § 59-14-9(A), NMSA 1953, as well as that of similar statutes adopted by many other states, pursuant to 29 U.S.C. § 667, depends upon the validity of 29 U.S.C. § 657(a). This Court's decision in *Barlow's* will be controlling not only as to the federal statute, but also as to the corresponding New Mexico statute, and every similar statute of other states. The New Mexico Supreme Court recognized this when it stated in its opinion that "[t]he issue of whether state and federal agencies are empowered to conduct non-consensual inspections of business premises for health and safety purposes without search warrants has generated a vast amount of recent litigation in state and federal courts. The matter is now before the United States Supreme Court." (Citation to *Barlow's* omitted.)

It is, therefore, appropriate that this Court decide this case at the same time it decides the *Barlow's* appeal.

CONCLUSION

For the foregoing reasons, this petition for a writ of certiorari should be granted. 28 U.S.C. § 2403 may be applicable.

Respectfully submitted,

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February 10, 1978

APPENDIX A

Filed: October 26, 1977

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

STATE OF NEW MEXICO, ex rel.
ENVIRONMENTAL IMPROVEMENT AGENCY,
vs. Plaintiff-Appellant,

No. 11,344

ALBUQUERQUE PUBLISHING COMPANY,
a New Mexico corporation,
Defendant-Appellee.

APPEAL FROM THE DISTRICT COURT
OF BERNALILLO COUNTY
Rozier Sanchez, Judge

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Attorneys for Defendant-Appellee.

OPINION

EASLEY, J.

The issue of whether state and federal agencies are empowered to conduct non-consensual inspections of business

premises for health and safety purposes without search warrants has generated a vast amount of recent litigation in state and federal courts. The matter is now before the United States Supreme Court. *Barlow's, Inc. v. Usery*, 424 F.Supp. 437 (D. Idaho 1977) (three judge court), *appeal docketed sub nom. Marshall v. Barlow's, Inc.*, No. 76-1143, 45 U.S.L.W. 3686 (April 18, 1977).

Another lengthy analysis here of the legislative background and the various conflicting opinions could be of no substantial benefit to the New Mexico bench, bar or the litigants.

This Court chooses to follow the theories advanced in *Dunlop v. Hertzler Enterprises*, 418 F.Supp 627 (D.N.M. 1976), *appeal docketed* No. 76-2020 (10th Cir. November 5, 1976) and *Usery v. Centrif-Air Machine Co.*, 424 F.Supp. 959, 961 (N.D. Ga. 1977). In so doing, we hold that a non-consensual, warrantless administrative inspection of business premises can be made only when: (1) the enterprise sought to be inspected is engaged in a business pervasively regulated by state or federal government; (2) the inspection will pose only a minimal threat to justifiable expectations of privacy; (3) the warrantless inspection is a crucial part of a regulatory scheme designed to further an urgent government interest; and (4) the inspection is carefully limited as to time, place and scope.

There was no showing in this case that defendant-appellee, Albuquerque Publishing Company, was or is engaged in a pervasively-regulated business. Thus the plaintiff-appellant, State Environmental Improvement Agency, failed to satisfy the first test, which is fatal to its application for an order compelling inspection. We need not determine whether the other elements of minimal intrusion, urgency and reasonableness have been satisfied.

We therefore conclude that this state agency, in the absence of the consent of the Albuquerque Publishing Company to inspect its premises, must obtain a search warrant based upon a

preliminary finding of probable cause by a judicial officer before being allowed to inspect the premises involved.

The decision of the trial court is affirmed.

IT IS SO ORDERED.

s/ Mack Easley
JUSTICE

WE CONCUR:

s/ H. Vern Payne
H. Vern Payne, Justice

s/ William R. Federici
William R. Federici, Justice

APPENDIX B

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO
Tuesday, November 15, 1977

NO. 11,344

STATE OF NEW MEXICO, ex rel.
ENVIRONMENTAL IMPROVEMENT
AGENCY,
Plaintiff-Appellant, Bernalillo County

vs.

ALBUQUERQUE PUBLISHING COMPANY,
a New Mexico corporation,
Defendant-Appellee.

This matter coming on for consideration by the Court upon Motion of Appellant for a Rehearing, and the Court having considered said motion and being sufficiently advised in the premises;

NOW, THEREFORE, IT IS ORDERED that motion of Appellant for rehearing be and the same is hereby denied.

ATTEST: A TRUE COPY

s/ Rose Marie Alderete

Clerk of the Supreme Court
of the State of New Mexico

(SEAL)

Supreme Court, U.S.
FILED
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MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

October Term, 1977

No. 77-1132

STATE OF NEW MEXICO
ex. rel. ENVIRONMENTAL IMPROVEMENT AGENCY
Petitioner,

vs.

ALBUQUERQUE PUBLISHING COMPANY,
a New Mexico Corporation,
Respondent.

BRIEF OF RESPONDENT IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF NEW MEXICO

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TABLE OF CONTENTS

	Page
OPINION BELOW	1
JURISDICTION	1
QUESTION PRESENTED	2
CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED	2
STATEMENT OF THE CASE	3
ARGUMENT FOR DENIAL OF CERTIORARI AND APPEAL	4
CONCLUSION	6

TABLE OF AUTHORITIES

CASES:

Avery v. Midland County
(1968) 390 US 474, 478, 88 S Ct 1114, 20 L ed2d 45 .. 5

Cooper v. California
(1967) 386 U.S. 58, 17 L.Ed.2d 730, 87 S.Ct. 788 .. 5, 6

Henry v. Mississippi
(1965) 379 US 443, 85 S Ct 564, 13 L ed2d 408 5

Herb v. Pitcairn
(1945) 324 US 117, 125, 65 S Ct 459, 89 L ed 789 ... 5

Jankovich v. Indiana Toll Road Commission
(1965) 379 US 487, 85 S Ct 493, 13 L ed2d 439 5

Ohio v. Gallagher
(1976) 425 US 257, 96 S Ct 1438, 47 L ed2d 722 .. 5, 6

	Page
Paschall v. Christie-Stewart, Inc. (1973) 414 US 100, 94 S Ct 313, 38 L ed2d 298	5
State v. Rascon 88 N.M. 395, 540 P.2d 875 (1975)	6
Williams v. Georgia (1955) 349 US 375, 75 S Ct 814, 99 L ed 1161	5
Wolfe v. North Carolina (1960) 364 US 177, 80 S Ct 1482, 4 L ed2d 1650	5
CONSTITUTIONS:	
New Mexico Constitution Article II, Section 10	3, 4, 5, 6
United States Constitution Fourth Amendment	2, 5, 6
STATUTES:	
Judicial Code:	
28 USC §1257	4
28 USC §2103	4
28 USC §2403	4
29 USC §657(a)	2
Occupational Health and Safety Act of 1970 59-14-9(A) N.M.S.A.	2, 3, 4, 5, 6

IN THE

Supreme Court of the United States

October Term, 1977

No. 77-1132

STATE OF NEW MEXICO
ex. rel. ENVIRONMENTAL IMPROVEMENT AGENCY
Petitioner,
vs.
ALBUQUERQUE PUBLISHING COMPANY,
a New Mexico Corporation,
Respondent.

BRIEF OF RESPONDENT IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF NEW MEXICO

Respondent, Albuquerque Publishing Company, prays that this Court deny the Writ of Certiorari sought by Petitioner, for lack of power to review. Alternatively, Respondent would pray that this matter be remanded to the Supreme Court of the State of New Mexico to permit that Court to explicate whether its decision rests solely on a repugnancy of the state statute to the United States Constitution.

OPINION BELOW

See Petition, p. 1, to which Respondent does not object.

JURISDICTION

Respondent contests Petitioner's grounds for invoking jurisdiction. Jurisdiction is not properly invoked by petition for a writ of certiorari, or, as Petitioner obliquely attempts,

by appeal. The decision of the Supreme Court of the State of New Mexico sought to be reviewed does not rest on a finding of validity or invalidity of any law of the United States, nor does it rest solely upon the repugnance of state statute to the Constitution of the United States. To the contrary, the decision sought to be reviewed rests on a repugnance of a state statute to the Constitution of the State of New Mexico and repugnance to the Constitution of the United States. This Court will not review judgments of state courts that rest on adequate and independent state grounds.

QUESTION PRESENTED

Petitioner at page 2 of its Petition attempts to typify the question presented for review as whether the warrantless inspection provisions of Occupational Safety and Health Act of 1970, 29 U.S.C. §657(a), and the corresponding section of New Mexico's Occupational Health and Safety Act, §59-14-9(A) N.M.S.A., are repugnant to the Fourth Amendment of the United States Constitution. This typification is an attempt to create jurisdiction for review where none exists. The Supreme Court of the State of New Mexico did not rest its decision on any finding of validity or invalidity of the Federal law. It did rest its decision on a finding that the state statute was repugnant to the New Mexico Constitution, and, although the state court found further repugnancy between the state act and the Federal Constitution, the repugnancy to the state Constitution, as an adequate and independent state ground, precludes the review sought by Petitioner.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

Respondent agrees with the Petitioner's reference to

constitutional provisions and statutes involved, but disagrees with Petitioner's typification of the decision of the state court regarding these provisions and statutes.

STATEMENT OF THE CASE

Respondent believes that a proper understanding of the grounds for the state court decision requires reference to the record at the state trial court level, specifically the Judgment entered by the state trial court, as well as reference to the Opinion of the Supreme Court of the State of New Mexico. This is necessary because the Opinion of the Supreme Court of the State of New Mexico does not specifically recite whether it is grounded on the Fourth Amendment to the United States Constitution or on Article II, Section 10 of the New Mexico Constitution, or both said Constitutions. However, the Opinion does specifically affirm the Judgment of the state trial court, where the repugnancy of Section 59-14-9(A) to both the Federal Constitution *and* the New Mexico Constitution were grounds for the Judgment.

Specifically, the state trial court, in its Judgment, stated:

> "I. That the warrantless search of Defendants' non-public premises, pursuant to Section 59-14-9, NMSA, 1953 Comp. (1975 Pocket Supp.) is in violation of the Fourth Amendment of the United States Constitution and Article II, Section 10 of the New Mexico Constitution."
>
> "IV. That Plaintiff and all persons acting by, through or under it, and its or their successors in office, are hereby permanently Restrained and Enjoined from conducting or attempting to conduct any searches or inspections of the non-public portions of Defendant Albuquerque Publishing Company's premises, pursuant to Section

59-14-9, NMSA, 1953 Comp. (1975 Pocket Suppl.), in the absence of a warrant."

(See Judgment entered February 1, 1977 — Appendix I to this Brief).

Respondent otherwise refers this Court to Petitioner's Statement (of the proceedings), pp. 4-7 of Petition.

ARGUMENT

The Judgment of the state trial court clearly found Section 59-14-9(A) N.M.S.A. 1953 repugnant to both Article II, Section 10 of the New Mexico Constitution and to the Fourth Amendment to the United States Constitution. The state trial court did *not* make any decision as to the repugnancy of any Federal law to either the State Constitution or the Federal Constitution. The Supreme Court of the State of New Mexico in its Opinion specifically affirmed the Judgment of the state trial court.

The Petitioner's oblique reference to a possible right of appeal pursuant to 28 U.S.C. §1257(1) is, therefore, not substantiated by the record below, and Petitioner's further attempt to salvage a right to review by this Court pursuant to 28 U.S.C. §*2403*, which Respondent must conclude was an attempted reference to 28 U.S.C. §*2103*, is further inapposite because 28 U.S.C. §2103 pertains only to an *appeal* improvidently sought, not to *certiorari* improvidently sought. In short, no statute of the United States was found invalid by the Supreme Court of New Mexico as required for review by appeal under 28 U.S.C. §1257(1), even if such could be raised in a petition for certiorari.

The state court having found a state statute repugnant to the New Mexico Constitution (Article II, Section 10)

and repugnant to the United States Constitution (Fourth Amendment), review by this Court is precluded by the long line of decisions of this Court holding that this Court will not review judgments of state courts that rest on adequate and independent state grounds. *Herb v. Pitcairn* (1945) 324 US 117, 125, 65 S Ct 459, 89 L ed 789. See also *Williams v. Georgia* (1955) 349 US 375, 75 S Ct 814, 99 L ed 1161; *Wolfe v. North Carolina* (1960) 364 US 177, 80 S Ct 1482, 4 L ed2d 1650; *Henry v. Mississippi* (1965) 379 US 443, 85 S Ct 564, 13 L ed2d 408; *Jankovich v. Indiana Toll Road Commission* (1965) 379 US 487, 85 S Ct 493, 13 L ed2d 439; *Avery v. Midland County* (1968) 390 US 474, 478, 88 S Ct 1114, 20 L ed2d 45; *Paschall v. Christie-Stewart, Inc.* (1973) 414 US 100, 94 S Ct 313, 38 L ed2d 298; *Ohio v. Gallagher* (1976) 425 US 257, 96 S Ct 1438, 47 L ed2d 722.

Article II, Section 10 of the New Mexico Constitution provides:

"The people shall be secure in their persons, papers, homes and effects, from unreasonable searches and seizures, and no warrant to search any place, or seize any person or thing, shall issue without describing the place to be searched, or the persons or things to be seized, nor without a written showing of probable cause, supported by oath or affirmation."

It is clear from the Opinion sought to be reviewed that the Supreme Court of New Mexico, as an adequate and independent ground, found Section 59-14-9(A) N.M.S.A. 1953, repugnant to the quoted state constitutional provision.

It should perhaps be noted that this Court recognizes the right of the states to impose higher standards on searches and seizures than those required by the Federal Constitution. *Cooper v. California*, (1967) 386 U.S. 58, 17 L.Ed.2d 730, 87 S.Ct. 788. The Supreme Court of New

Mexico has in the decision here sought to be reviewed stated the standard it finds dictated by Article II, Section 10 of the New Mexico Constitution, and found the warrantless inspections attempted repugnant to that standard. Whether this Court would impose a less stringent standard under the Fourth Amendment to the United States Constitution begs the question. The Supreme Court of the State of New Mexico has recognized its rights as announced in *Cooper*. See *State v. Rascon*, 88 N.M. 395, 540 P.2d 875 (1975).

If this Court for some reason deems it unclear as to the grounds relied upon below in the decision of the Supreme Court of the State of New Mexico, it may, of course, remand this case to the Supreme Court of the State of New Mexico to explicate whether or not its Judgment rests solely on the Fourth Amendment to the United States Constitution. *Ohio v. Gallagher*, cited *supra*.

CONCLUSION

The Supreme Court of the State of New Mexico grounded its decision on a repugnancy of a New Mexico statute, Section 59-14-9(A), to Article II, Section 10 of the New Mexico Constitution as well as a repugnancy of that state statute to the Fourth Amendment to the United States Constitution. This Court will not review judgments of state courts that rest on adequate and independent state grounds. The Writ of Certiorari should be denied.

Respectfully submitted,
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APPENDIX I

STATE OF NEW MEXICO
COUNTY OF BERNALILLO
IN THE DISTRICT COURT

STATE OF NEW MEXICO, ex rel. NEW MEXICO ENVIRONMENTAL IMPROVEMENT AGENCY, *Plaintiff*,	)	
vs.	)	No. 9-76-04397
ALBUQUERQUE PUBLISHING COMPANY, a New Mexico corporation, *Defendant.*	)	

JUDGMENT

THIS MATTER having come on to be heard by the Court on January 18, 1977, upon the Amended Complaint filed herein by Plaintiff-counterdefendant, State of New Mexico, ex rel. New Mexico Environmental Improvement Agency (hereinafter "Plaintiff") and the Motion for Judgment on the Pleadings and the Counterclaim filed herein by Defendant-counterclaimant, Albuquerque Publishing Company (hereinafter "Defendant") and the Court having considered the briefs submitted by both parties, having heard and considered the oral arguments of counsel for both parties, and being otherwise fully advised in the premises, and the Court having heretofore entered its letter opinion in the record herein,

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED:

I.

That the warrantless search of Defendants' non-public

premises, pursuant to Section 59-14-9, NMSA, 1953 Comp. (1975 Pocket Supp.) is in violation of the Fourth Amendment of the United States Constitution and Article II, Section 10 of the New Mexico Constitution.

II.

The title provisions of the New Mexico Occupational Health and Safety Act, Section 59-14-1, et seq., NMSA, 1953 Comp. (Laws 1972, Chapter 63; Laws 1975, Chapter 290) do not violate Article IV, Section 16 of the New Mexico Constitution.

III.

The relief sought by Plaintiff in its Amended Complaint for a preliminary and permanent injunction is denied.

IV.

That Plaintiff and all persons acting by, through or under it, and its or their successors in office, are hereby permanently Restrained and Enjoined from conducting or attempting to conduct any searches or inspections of the non-public portions of Defendant Albuquerque Publishing Company's premises, pursuant to Section 59-14-9, NMSA, 1953 Comp. (1975 Pocket Supp.), in the absence of a warrant.

s/ROZIER SANCHEZ
District Judge

APPROVED:
TONY ANAYA
Attorney General
s/DOUGLAS FRASER
Assistant Attorney General
Attorney for Plaintiff
JOHNSON, PAULANTIS AND LANPHERE
Attorneys for Defendant